



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R07-OAR-2013-0208; FRL-9800-5]**

**Approval and Promulgation of Implementation Plans; State of Missouri; Infrastructure SIP Requirements for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards.**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing action on four Missouri State Implementation Plan (SIP) submissions. First, EPA is proposing to approve portions of two SIP submissions from the State of Missouri addressing the applicable requirements of Clean Air Act (CAA) for the 1997 and 2006 National Ambient Air Quality Standards (NAAQS) for fine particulate matter (PM<sub>2.5</sub>). The CAA requires that each state adopt and submit a SIP to support implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by EPA. These SIPs are commonly referred to as "infrastructure" SIPs. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. EPA is also proposing to approve two additional SIP submissions from

Missouri, one addressing the Prevention of Significant Deterioration (PSD) program in Missouri, and another addressing the requirements applicable to any board or body which approves permits or enforcement orders of the CAA, both of which support requirements associated with infrastructure SIPs.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE **FEDERAL REGISTER**].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R07-OAR-2013-0208, by one of the following methods:

1. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
2. *Email:* bhesania.amy@epa.gov.
3. *Mail:* Ms. Amy Bhesania, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, Air and Waste Management Division, 11201 Renner Boulevard, Lenexa, Kansas 66219.
4. *Hand Delivery or Courier:* Deliver your comments to Ms. Amy Bhesania, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, Air and Waste Management Division, 11201 Renner Boulevard, Lenexa, Kansas 66219.

*Instructions:* Direct your comments to Docket ID No. EPA-R07-OAR-2013-0208. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov> or email information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should

avoid the use of special characters, any form of encryption, and should be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219 from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Bhesania, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, KS 66219; *telephone number:* (913) 551-7147; *fax number:* (913) 551-7065; *email address:* bhesania.amy@epa.gov.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we refer to EPA. This section provides additional information by addressing the following questions:

I. What is Being Addressed in this Document?

II. What is a Section 110(a)(1) and (2) Infrastructure SIP?

III. What Elements are Applicable Under Sections 110(a)(1) and (2)?

IV. What is the Scope of this Rulemaking as it Relates to Infrastructure SIPs?

V. What is EPA's Evaluation of How the State Addressed the Relevant Elements of Sections 110(a)(1) and (2)?

VI. What are the Requirements of the PM<sub>2.5</sub> PSD Increment-SILs-SMC Rule for PSD SIP Programs?

VII. How Does the September 5, 2012 Missouri PSD Submission Satisfy the PM<sub>2.5</sub> PSD Increment-SILs-SMC Rule?

VIII. What are the Additional Provisions of the September 5, 2012 SIP Submission that EPA is Proposing to Take Action On?

IX. What Action is EPA Proposing?

X. Statutory and Executive Order Review

## **I. What is Being Addressed in this Document?**

In today's proposed rulemaking, EPA is proposing action on four Missouri SIP submissions. EPA received the first submission on February 27, 2007, addressing the infrastructure SIP requirements relating to the 1997 PM<sub>2.5</sub> NAAQS. EPA received the second submission on December 28, 2009, addressing the infrastructure SIP requirements relating to the 2006 PM<sub>2.5</sub> NAAQS. In a previous action EPA approved section 110(a)(2)(D)(i)(I) and (II) - Interstate and international transport requirements of Missouri's February 27, 2007, SIP submission for the 1997 PM<sub>2.5</sub> NAAQS (72 FR 25975, May 8, 2007); and EPA disapproved section 110(a)(2)(D)(i)(I) - Interstate and international transport requirements of Missouri's December 28, 2009, SIP submission for the 2006 PM<sub>2.5</sub> NAAQS (76 FR 43156, July 20, 2011). Therefore, in today's action, we are not proposing to act on these portions since they have already been acted upon by EPA. If EPA takes final action as proposed, we will have acted on both the February 27, 2007, and the December 28, 2009, submissions in their entirety excluding those provisions that are not within the scope of today's rulemaking as identified in section IV for both the 1997 and 2006 PM<sub>2.5</sub> infrastructure SIP submissions.

The third submission was received by EPA on September 5, 2012. This submission revises Missouri's rule in Title 10, Division 10, Chapter 6.060 of the Code of State Regulations (CSR) (10 CSR 10-6.060) "Construction Permits Required" to implement certain elements of the "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ( $PM_{2.5}$ ) - Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)" rule (75 FR 64864, October 20, 2010). In addition, this rule amendment defers the application of PSD permitting requirements to carbon dioxide emissions from bioenergy and other biogenic stationary sources.

EPA received the fourth submission on August 8, 2012. This submission addresses the conflict of interest provisions in section 128 of the CAA as it relates to infrastructure SIPs described in element E below.

## **II. What is a Section 110(a)(1) and (2) Infrastructure SIP?**

Section 110(a)(1) of the CAA requires, in part, that states make a SIP submission to EPA to implement, maintain and enforce each of the NAAQS promulgated by EPA after reasonable notice and public hearings. Section 110(a)(2) includes a list of specific elements that such infrastructure SIP submissions must address.

SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised NAAQS. These SIPs submissions are commonly referred to as "infrastructure" SIPs.

### **III. What Elements are Applicable Under Sections 110(a)(1) and (2)?**

On October 2, 2007, EPA issued guidance to address infrastructure SIP elements required under sections 110(a)(1) and (2) for the 1997 8-hour ozone and PM<sub>2.5</sub> NAAQS.<sup>1</sup> On September 25, 2009, EPA issued guidance to address infrastructure SIP elements required under sections 110(a)(1) and (2) for the 2006 24-hour PM<sub>2.5</sub> NAAQS.<sup>2</sup> EPA will address these elements below under the following headings: (A) Emission limits and other control measures; (B) Ambient air quality monitoring/data system; (C) Program for enforcement of control measures (PSD, New Source Review for nonattainment areas, and construction and modification of all stationary sources); (D) Interstate and

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<sup>1</sup> William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards, "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards," Memorandum to EPA Air Division Directors, Regions I-X, October 2, 2007 (2007 Memo).

<sup>2</sup> William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards, "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS)," Memorandum to EPA Regional Air Division Directors, Regions I-X, September 25, 2009 (2009 Memo).



international transport<sup>3</sup>; (E) Adequate authority, resources, implementation, and oversight; (F) Stationary source monitoring system; (G) Emergency authority; (H) Future SIP revisions; (I) Nonattainment areas; (J) Consultation with government officials, public notification, prevention of significant deterioration (PSD), and visibility protection; (K) Air quality and modeling/data; (L) Permitting fees; and (M) Consultation/participation by affected local entities.

#### **IV. What is the Scope of this Rulemaking as it Relates to Infrastructure SIPs?**

The applicable infrastructure SIP requirements are contained in sections 110(a)(1) and (2) of the CAA. EPA is proposing action on each of the requirements of section 110(a)(2)(A) through section 110(a)(2)(M), as applicable, except for the elements detailed in the following paragraphs.

This rulemaking will not cover four substantive issues that are not integral to acting on a state's infrastructure SIP submission: (i) existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions ("SSM"); (ii) existing provisions related

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<sup>3</sup> Section 110(a)(2)(D)(i) includes four requirements referred to as prongs 1 through 4. Prongs 1 and 2 are provided at section 110(a)(2)(D)(i)(I); Prongs 3 and 4 are provided at section 110(a)(2)(D)(i)(II).

to "director's variance" or "director's discretion" that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA ("director's discretion"); (iii) existing provisions for minor source New Source Review (NSR) programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs ("minor source NSR"); and, (iv) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's December 31, 2002, "Final NSR Improvement Rule" (67 FR 80186), as amended by the "NSR Reform" final rulemaking on June 13, 2007 (72 FR 32526). Instead, EPA has indicated that it has other authority to address any such existing SIP defects in other rulemakings, as appropriate. A detailed rationale for why these four substantive issues are not part of the scope of infrastructure SIP rulemakings can be found at 76 FR 41075, 41076-41079 (July 13, 2011). *See also* 77 FR 38239, 38240-38243 (June 27, 2012); and 77 FR 46361, 46362-46365 (August 3, 2012).

In addition to the four substantive areas above, EPA is not acting in this action on section 110(a)(2)(I) - Nonattainment Area Plan or Plan Revisions Under Part D and on the visibility protection portion of section 110(a)(2)(J). A detailed rationale

for not acting on elements of these requirements is discussed within each applicable section of this rulemaking. As described above in section I, EPA is also not acting on portions of section 110(a)(2)(D)(i) - Interstate and international transport as final actions have already been taken on portions of this element for both the Missouri 1997 and 2006 PM<sub>2.5</sub> infrastructure SIP submissions.

Finally, as part of this action, EPA is evaluating the state's compliance with the new PSD requirements promulgated in the "Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>).\" (73 FR 28321, May 16, 2008) and the PM<sub>2.5</sub> Increment, SILs and SMC rule (75 FR 64864, October 20, 2010). Regarding the May 16, 2008 rule, on January 4, 2013, the U.S. Court of Appeals in the District of Columbia, in *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir.), issued a judgment that remanded two of EPA's rules implementing the 1997 PM<sub>2.5</sub> NAAQS, including the 2008 rule. The Court ordered EPA to "repromulgate these rules pursuant to Subpart 4 consistent with this opinion.\" *Id.* at 437. Subpart 4 of part D, Title 1 of the CAA establishes additional provisions for particulate matter nonattainment areas. The 2008 implementation rule addressed by the Court's

decision promulgated NSR requirements for implementation of PM<sub>2.5</sub> in both nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). As the requirements of subpart 4 only pertain to nonattainment areas, EPA does not consider the portions of the 2008 rule that address requirements for PM<sub>2.5</sub> attainment and unclassifiable areas to be affected by the Court's opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 rule in order to comply with the Court's decision. Accordingly, EPA's approval of Missouri's infrastructure SIP as to Elements (C), (D)(i)(II), and (J), with respect to the PSD requirements promulgated by the 2008 implementation rule, does not conflict with the Court's opinion.

The Court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 implementation rule also does not affect EPA's action on the present infrastructure SIP submission. As described above, EPA interprets the Act to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which states must

submit by the dates statutorily prescribed under part D within subparts 2 through 5, extending as far as ten years following designations for some elements. Given these separate applicable SIP submission dates, EPA concludes that these specific requirements are outside the scope of the infrastructure SIPs.

**V. What is EPA's Evaluation of How the State Addressed the Relevant Elements of Sections 110(a)(1) and (2)?**

On July 18, 1997, EPA promulgated new PM<sub>2.5</sub> primary and secondary NAAQS (62 FR 38652). On October 17, 2006, EPA made further revisions to the primary and secondary NAAQS for PM<sub>2.5</sub> (71 FR 61144). On February 27, 2007, EPA Region 7 received Missouri's infrastructure SIP submission for the 1997 PM<sub>2.5</sub> standard. EPA determined this SIP submission complete on March 27, 2007. On December 28, 2009, EPA Region 7 received Missouri's infrastructure SIP submission for the 2006 PM<sub>2.5</sub> standard. This SIP submission became complete as a matter of law on June 28, 2010. EPA has reviewed both of Missouri's infrastructure SIP submissions and the relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Missouri's SIP.

(A) *Emission limits and other control measures:* Section 110(a)(2)(A) requires SIPs to include enforceable emission

limits and other control measures, means or techniques, schedules for compliance and other related matters as needed to implement, maintain and enforce each NAAQS.<sup>4</sup>

The State of Missouri's Air Conservation Law and Air Pollution Control Rules authorize the Missouri Department of Natural Resources (MDNR) to regulate air quality and implement air quality control regulations. Specifically, Missouri Revised Statutes (RsMO) section 643.030 authorizes the "Air Conservation Commission of the State of Missouri" (MACC) to control air pollution, which is defined in RsMO section 643.020 to include air contaminants in quantities, of characteristics and of a duration which cause or contribute to injury to human, plant, or animal life or health or to property. RsMO section 643.050 authorizes the MACC to classify and identify air contaminants.

Missouri's rule 10 CSR 10-6.010 "Ambient Air Quality Standards" adopts the 1997 PM<sub>2.5</sub> annual standard and the 2006 PM<sub>2.5</sub> 24-hour standard as promulgated by EPA. In addition, 10 CSR 10-6.040 "Reference Methods" incorporates by reference the relevant appendices in 40 CFR part 50 for measuring and

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<sup>4</sup> The specific nonattainment area plan requirements of section 110(a)(2)(I) are subject to the timing requirements of section 172, not the timing requirement of section 110(a)(1). Thus, section 110(a)(2)(A) does not require that states submit regulations or emissions limits specifically for attaining the 1997 or 2006 PM<sub>2.5</sub> NAAQS. Those SIP provisions are due as part of each state's attainment plan, and will be addressed separately from the requirements of section 110(a)(2)(A). In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

calculating the concentration of  $PM_{2.5}$  in the atmosphere to determine whether the standards have been met. Therefore,  $PM_{2.5}$  is an air contaminant which may be regulated under Missouri law.

RsMO section 643.050 of the Air Conservation Law authorizes the MACC, among other things, to regulate the use of equipment known to be a source of air contamination and to establish emissions limitations for air contaminant sources. Missouri also establishes timetables for compliance in its rules, as appropriate. Appendix A of the state's infrastructure SIP submission for both the 1997  $PM_{2.5}$  NAAQS and the 2006  $PM_{2.5}$  NAAQS contains a link to the Missouri Air Conservation Law and Appendix B of each submission contains a link to Missouri's state rules.

Based upon review of the state's infrastructure SIP submissions for the 1997 and 2006  $PM_{2.5}$  NAAQS, and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Missouri's SIP, EPA believes that Missouri has statutory and regulatory authority to establish additional emissions limitations and other measures, as necessary to address attainment and maintenance of the  $PM_{2.5}$  standards. Therefore, EPA believes that the Missouri SIP adequately addresses the requirements of section 110(a)(2)(A)

for the 1997 and 2006 PM<sub>2.5</sub> NAAQS<sup>5</sup> and is proposing to approve the February 27, 2007, submission regarding the 1997 PM<sub>2.5</sub> infrastructure SIP requirements and the December 28, 2009, submission regarding the 2006 PM<sub>2.5</sub> infrastructure SIP requirements for this element.

*(B) Ambient air quality monitoring/data system:* Section 110(a)(2)(B) requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, collection and analysis of ambient air quality data, and making these data available to EPA upon request.

To address this element, RsMO section 643.050 of the Air Conservation Law provides the enabling authority necessary for Missouri to fulfill the requirements of section 110(a)(2)(B). The Air Pollution Control Program and Air Quality Analysis Section, within MDNR, implement these requirements. Along with their other duties, the monitoring program collects air monitoring data, quality assures the results, and reports the data.

MDNR submits annual monitoring network plans to EPA for approval, including its PM<sub>2.5</sub> monitoring network, as required by 40 CFR 58.10. Prior to submissions to EPA, Missouri makes the

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<sup>5</sup> For the reasons stated earlier, EPA is not addressing SSM and director's discretion provisions in this rulemaking.



plans available for public review on MDNR's web site at (<http://www.dnr.mo.gov/env/apcp/monitoring/monitoringnetworkplan.pdf>). MDNR also conducts five-year monitoring network assessments, including the PM<sub>2.5</sub> monitoring network, as required by 40 CFR 58.10(d). On January 10, 2013, EPA approved Missouri's 2012 Ambient Air Quality Monitoring Plan and on October 27, 2010, EPA approved Missouri's Five-Year Air Monitoring Network Assessment. Missouri 10 CSR 10-6.040(4)(L) "Reference Methods" requires that ambient concentrations of PM<sub>2.5</sub> be measured in accordance with the applicable Federal regulations in 40 CFR part 50, Appendix L, or an equivalent method as approved by EPA pursuant to 40 CFR part 53. Furthermore, Missouri submits air quality data to EPA's Air Quality System (AQS) system in a timely manner, pursuant to the provisions of the state's grant work plans developed in conjunction with EPA.

Based upon review of the state's infrastructure SIP submissions for the 1997 and 2006 PM<sub>2.5</sub> NAAQS, and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Missouri's SIP, EPA believes that the Missouri SIP meets the requirements of section 110(a)(2)(B) for the 1997 and 2006 24-hour PM<sub>2.5</sub> NAAQS and is proposing to approve the February 27, 2007, submission regarding

the 1997 PM<sub>2.5</sub> infrastructure SIP requirements and the December 28, 2009, submission regarding the 2006 PM<sub>2.5</sub> infrastructure SIP requirements for this element.

*(C) Program for enforcement of control measures (PSD, New Source Review for nonattainment areas, and construction and modification of all stationary sources):* Section 110(a)(2)(C) requires states to include the following three elements in the SIP: (1) a program providing for enforcement of all SIP measures described in section 110(a)(2)(A); (2) a program for the regulation of the modification and construction of stationary sources as necessary to protect the applicable NAAQS (i.e., state-wide permitting of minor sources); and (3) a permit program to meet the major source permitting requirements of the CAA (for areas designated as attainment or unclassifiable for the NAAQS in question).<sup>6</sup>

*(1) Enforcement of SIP Measures.* With respect to enforcement of requirements of the SIP, the Missouri statutes provide authority for MDNR to enforce the requirements of the Air Conservation Law, and any regulations, permits, or final compliance orders issued under the provisions of that law. For example, RsMO section 643.080 of the Air Conservation Law

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<sup>6</sup> As discussed in further detail below, this infrastructure SIP rulemaking will not address the Missouri program for nonattainment area related provisions, since EPA considers evaluation of these provisions to be outside the scope of infrastructure SIP actions.

authorizes MDNR to issue compliance orders for violations of the Air Conservation Law, rules promulgated thereunder (which includes rules comprising the Missouri SIP), and conditions of any permits (which includes permits under SIP-approved permitting programs). RSMO section 643.085 authorizes MDNR to assess administrative penalties for violations of the statute, regulations, permit conditions, or administrative orders. RSMO section 643.151 authorizes the MACC to initiate civil actions for these violations, and to seek penalties and injunctive relief to prevent any further violation. RSMO section 643.191 provides for criminal penalties for known violations of the statute, standards, permit conditions, or regulations promulgated thereunder.

(2) *Minor New Source Review*. Section 110(a)(2)(C) also requires that the SIP include measures to regulate construction and modification of stationary sources to protect the NAAQS. With respect to smaller state-wide minor sources (Missouri's major source permitting program is discussed in (3) below), Missouri has a SIP-approved program under rule 10 CSR 10-6.060 "Construction Permits Required" to review such sources to ensure, among other requirements, that new and modified sources will not interfere with NAAQS attainment. The state rule

contains two general categories of sources subject to the minor source permitting program. The first category is "de minimis" sources (regulated at 10 CSR 10-6.060(5)) -- sources that are not exempted or excluded by rule 10 CSR 10-6.061 "Construction Permit Exemptions" or are permitted under rule 10 CSR 10-6.062 "Construction Permits By Rule" and emit below specified levels defined at 10 CSR 10-6.020(3)(A) "Definitions and Common Reference Tables." Permits for these sources may only be issued if any construction or modification at the source does not result in net emissions increases above "de minimis" levels.

The second category of minor sources are those that emit above the de minimis levels, but below the major source significance levels. Permits for these sources may only be issued after a determination, among other requirements, that the proposed source or modification would not interfere with attainment or maintenance of a NAAQS (10 CSR 10-6.060(6)).

In this action, EPA is proposing to approve Missouri's infrastructure SIP for the 1997 and 2006 PM<sub>2.5</sub> standards with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. In this action, EPA is not

proposing to approve or disapprove the state's existing minor NSR program to the extent that it is inconsistent with EPA's regulations governing this program. EPA has maintained that the CAA does not require that new infrastructure SIP submissions correct any defects in existing EPA-approved provisions of minor NSR programs in order for EPA to approve the infrastructure SIP for element (C) (e.g., 76 FR 41076-41079). EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and EPA believes it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

(3) *Prevention of Significant Deterioration (PSD) permit program.* Missouri also has a program approved by EPA as meeting the requirements of part C, relating to prevention of

significant deterioration of air quality. In order to demonstrate that Missouri has met this sub-element, this PSD program must cover requirements for not just  $\text{PM}_{2.5}$ , but for all other regulated NSR pollutants as well. To implement the PSD permitting component of section 110(a)(2)(C) for the 1997 and 2006  $\text{PM}_{2.5}$  NAAQS, states were required to submit the necessary SIP revisions to EPA by May 16, 2011, and July 20, 2012, pursuant to EPA's NSR  $\text{PM}_{2.5}$  Implementation Rule (2008 NSR Rule), (73 FR 28321, May 16, 2008) and EPA's  $\text{PM}_{2.5}$  Increment-SILs-SMC Rule, (75 FR 64864, October 20, 2010). As described in section IV above, the January 4, 2013, court decision remanding 2008 rule does not impact the EPA's action as to this element.

The 2008 NSR Rule finalized several new requirements for SIPs to address sources that emit direct  $\text{PM}_{2.5}$  and other pollutants that contribute to secondary  $\text{PM}_{2.5}$  formation. One of these requirements is for NSR permits to address pollutants responsible for the secondary formation of  $\text{PM}_{2.5}$ , otherwise known as precursors. In the 2008 NSR Rule, the EPA identified precursors to  $\text{PM}_{2.5}$  for the PSD program to include sulfur dioxide ( $\text{SO}_2$ ) and nitrogen oxide ( $\text{NO}_x$ ) (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that  $\text{NO}_x$  emissions in an area are not a significant contributor to that

area's ambient PM<sub>2.5</sub> concentrations). See 73 FR 28325. The 2008 NSR Rule also specified that volatile organic compounds (VOCs) are not considered to be precursors to PM<sub>2.5</sub> in the PSD program unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of VOCs in an area are significant contributors to that area's ambient PM<sub>2.5</sub> concentrations. The specific references to SO<sub>2</sub>, NO<sub>x</sub>, and VOCs as they pertain to secondary PM<sub>2.5</sub> formation are currently codified at 40 CFR 51.166(b)(49)(i)(b) and 40 CFR 52.21(b)(50)(i)(b). The deadline for states to submit SIP revisions to their PSD programs incorporating these new requirements was May 16, 2011 (73 FR 28341).

As part of identifying pollutants that are precursors to PM<sub>2.5</sub>, the 2008 NSR Rule also revised the definition of "significant" as it relates to a net emissions increase or the potential of a source to emit pollutants. Specifically, 40 CFR 51.166(b)(23)(i) and 40 CFR 52.21(b)(23)(i) define "significant" for PM<sub>2.5</sub> to mean the following emissions rates: 10 tons per year (tpy) of direct PM<sub>2.5</sub>; 40 tpy of SO<sub>2</sub>; and 40 tpy of NO<sub>x</sub> (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO<sub>x</sub> emissions in an area are not a

significant contributor to that area's ambient  $PM_{2.5}$  concentrations).

Another provision of the 2008 NSR Rule requires states to account for gases that could condense to form particulate matter, known as condensables, for applicability determinations and in establishing emission limits for  $PM_{2.5}$  and  $PM_{10}$ <sup>7</sup> in NSR permits. EPA provided that states were required to account for  $PM_{2.5}$  and  $PM_{10}$  condensables beginning on or after January 1, 2011. This requirement is currently codified in 40 CFR 51.166(b)(49)(i)(a) and 40 CFR 52.21(b)(50)(i)(a). Revisions to states' PSD programs incorporating the inclusion of condensables were required to be submitted to EPA by May 16, 2011 (73 FR at 28341).

The definition of "regulated NSR pollutant" in the PSD provisions of the 2008 rule inadvertently required states to also account for the condensable PM fraction with respect to one indicator of PM referred to as "particulate matter emissions." The term "particulate matter emissions" includes  $PM_{2.5}$  and  $PM_{10}$  particles as well as larger particles, and is an indicator for PM that has long been used for measuring PM under various New

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<sup>7</sup>  $PM_{10}$  refers to particles with diameters between 2.5 and 10 microns, oftentimes referred to as "coarse" particles.



Source Performance Standards (NSPS) (40 CFR part 60).<sup>8</sup> A similar provision addressing condensables was added to the Nonattainment NSR SIP provisions of the 2008 NSR Rule but does not include a requirement to account for "particulate matter (PM) emissions" in all cases (40 CFR 51.165(a)(1)(xxxvii)(D)). On October 12, 2012, EPA finalized a rulemaking to amend the definition of "regulated NSR pollutant" promulgated in the NSR PM<sub>2.5</sub> Rule regarding the PM condensable provision currently at 40 CFR 51.166(b)(49)(i)(a), 52.21(b)(50)(i)(a), and EPA's Emissions Offset Interpretative Ruling. See 77 FR 65107. The rulemaking removes the inadvertent requirement in the 2008 NSR Rule that the measurement of condensables be generally included as part of the measurement and regulation of "particulate matter emissions."<sup>9</sup>

On April 2, 2013 (78 FR 19602), EPA proposed to approve Missouri's request to amend the SIP to meet the 2008 PM<sub>2.5</sub> NAAQS implementation requirements of the May 16, 2008, NSR PM<sub>2.5</sub> Rule as described above. In this SIP revision, Missouri adopted rule

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<sup>8</sup> In addition to the NSPS for PM, it is noted that states regulated "particulate matter emissions" for many years in their SIPs for PM, and the same indicator has been used as a surrogate for determining compliance with certain standards contained in 40 CFR part 63, regarding National Emission Standards for Hazardous Air Pollutants.

<sup>9</sup> The change finalized in that action does not mean that EPA has entirely exempted the inclusion of the condensable PM fraction as part of accounting for "particulate matter emissions." It may be necessary for PSD sources to count the condensable PM fraction with regard to "particulate matter emissions" where either the applicable NSPS compliance test includes the condensable PM fraction or the applicable implementation plan requires the condensable PM fraction to be counted. See 77 FR 65112.

revisions to establish (1) the requirement for NSR permits to address directly emitted PM<sub>2.5</sub> and precursor pollutants; and (2) significant emission rates for direct PM<sub>2.5</sub> and precursor pollutants (SO<sub>2</sub> and NO<sub>x</sub>), among other revisions. With respect to the condensable PM issue described above, Missouri has addressed this through the SIP submission received by EPA on September 5, 2012, and which is being proposed for approval in today's action, as discussed in more detail below. Therefore, EPA has proposed to incorporate into Missouri's SIP all of the provisions required by the 2008 PM<sub>2.5</sub> implementation rule that are applicable to element C of infrastructure SIPs.

With respect to the 2010 PM<sub>2.5</sub> Increment—SILs—SMC Rule, EPA is proposing to approve the portion of the September 5, 2012, submission addressing the required PM<sub>2.5</sub> increments and associated implementing regulations as part of today's proposed rulemaking. A further analysis of how Missouri meets the requirements of the 2010 rule is described below in sections VI and VII.

To meet the requirements of element (C), in addition to the PM<sub>2.5</sub> PSD elements that must be incorporated in to the SIP, each state's PSD program must meet applicable requirements for all regulated pollutants in PSD permits. For example, if a state

lacks provisions needed to address NO<sub>x</sub> as a precursor to ozone, the provisions of section 110(a)(2)(C) requiring a suitable PSD permitting program for PM<sub>2.5</sub> will not be considered to be met.

Relating to ozone, EPA's "Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard - Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline" (Phase 2 Rule), was published on November 8, 2005 (70 FR 71612). Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify NO<sub>x</sub> as a precursor to ozone (70 FR 71612 at 71679, and 71699-71700). This requirement is currently codified in 40 CFR 51.166(b)(49)(i)(b). On April 16, 2012, EPA finalized a rulemaking to approve the provisions into the Missouri SIP which provide that ozone precursors (volatile organic compounds-VOC and nitrogen oxides-NO<sub>x</sub>) are regulated. See 77 FR 22500. For example, a source that is major for NO<sub>x</sub> is also major for ozone under the state's PSD program in rule 10 CSR 10-6.060(8). In addition, rules 10 CSR 10-6.060(1)(A) and 10-6.060(8)(A) incorporate 40 CFR 52.21(b)(50)(i)(a) by reference. The latter

regulation specifically identifies volatile organic compounds and nitrogen oxides as precursors to ozone in all attainment and unclassifiable areas.

Regarding greenhouse gases (GHG), on June 3, 2010, EPA issued a final rule establishing a "common sense" approach to addressing GHG emissions from stationary sources under the CAA permitting programs. The "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule," or "Tailoring Rule," set thresholds for GHG emissions that define when permits under the NSR PSD and Title V operating permit programs are required for new and existing industrial facilities. See 75 FR 31514. Without the new threshold provided by the Tailoring Rule, sources with GHG emissions above the statutory thresholds (of 100 or 250 tons per year) would be subject to PSD, which could have potentially resulted in apartment complexes, strip malls, small farms, restaurants, etc. triggering GHG PSD requirements.

On December 23, 2010, EPA promulgated a subsequent series of rules that put the necessary framework in place to ensure that industrial facilities can get CAA permits covering their GHG emissions when needed, and that facilities emitting GHGs at levels below those established in the Tailoring Rule need not

obtain CAA permits.<sup>10</sup> Included in this series of rules was EPA's issuance of the "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans," referred to as the PSD SIP "Narrowing Rule" (75 FR 82536, December 30, 2010). The Narrowing Rule limits, or "narrows," EPA's approval of PSD programs applied to previously EPA-approved SIP PSD programs, including Missouri's, that apply PSD to GHG emissions. The Narrowing Rule limited, or "narrowed," EPA's approval of Missouri's and other PSD programs so that the SIP provisions that apply PSD to GHG emissions increases from sources emitting GHG below the Tailoring Rule thresholds were no longer EPA approved, and instead, had the status of having been submitted by the state but not yet acted upon by EPA. In other words, the Narrowing Rule focused on eliminating the PSD obligations under Federal law for sources below the Tailoring Rule thresholds.

After EPA adopted the Narrowing Rule, Missouri submitted to EPA, and EPA approved in to the Missouri SIP on April 16, 2012, a revision that limited PSD applicability to GHG-emitting sources at or above the Tailoring Rule thresholds. With this SIP revision, Missouri's PSD program conforms to EPA's requirements

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<sup>10</sup> <http://www.epa.gov/NSR/actions.html#2010>.

for PSD programs with respect to GHG emissions, and avoids an overwhelming increase in the number of required permits and resulting burden on Missouri's permitting resources (77 FR 22500, April 16, 2012).

Based upon review of the State's infrastructure SIP submissions for the 1997 and 2006 PM<sub>2.5</sub> NAAQS and the September 5, 2012, submission regarding PSD requirements, and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Missouri's SIP, with respect to the requirements of section 110(a)(2)(C) for the 1997 and 2006 24-hour PM<sub>2.5</sub> NAAQS, EPA is proposing to approve the February 27, 2007, submission regarding the 1997 PM<sub>2.5</sub> infrastructure SIP requirements, the December 28, 2009, submission regarding the 2006 PM<sub>2.5</sub> infrastructure SIP requirements, and the September 5, 2012, submission regarding the PSD requirements. EPA's analysis of the September 5, 2012, submission is provided in sections VI and VII below.

*(D) Interstate and international transport:*

Section 110(a)(2)(D)(i)(I) requires SIPs to include adequate provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance, of any NAAQS

in another state. Furthermore, section 110(a)(2)(D)(i)(II) requires SIPs to include adequate provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required of any other state to prevent significant deterioration of air quality or to protect visibility. Section 110(a)(2)(D)(i) includes four requirements referred to as prongs 1 through 4. Prongs 1 and 2 are provided at section 110(a)(2)(D)(i)(I); Prongs 3 and 4 are provided at section 110(a)(2)(D)(i)(II).

In this notice, we are not proposing to take any actions related to the interstate transport requirements of section 110(a)(2)(D)(i)(I) - prongs 1 and 2. At this time, there is no SIP submission from Missouri relating to 110(a)(2)(D)(i)(I) for the 1997 or 2006 PM<sub>2.5</sub> NAAQS pending before the Agency. EPA previously approved the provisions of the Missouri SIP submission addressing the requirements of section 110(a)(2)(D)(i)(I) and (II), with respect to the 1997 PM<sub>2.5</sub> standards, into the Missouri SIP (72 FR 25975, May 8, 2007). EPA also disapproved the portion of the Missouri SIP submission intended to address section 110(a)(2)(D)(i)(I) with respect to the 2006 PM<sub>2.5</sub> NAAQS (76 FR 43156, July 20, 2011).

With respect to the PSD requirements of section 110(a)(2)(D)(i)(II) - prong 3, EPA notes that Missouri's satisfaction of the applicable infrastructure SIP PSD requirements for the 1997 and 2006 PM<sub>2.5</sub> NAAQS have been detailed in the section addressing section 110(a)(2)(C). EPA also notes that the proposed action in that section related to PSD is consistent with the proposed approval related to PSD for section 110(a)(2)(D)(i)(II). Therefore, EPA is proposing to approve the PSD requirements of section 110(a)(2)(D)(i)(II) - prong 3.

With regard to the applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II) - prong 4, states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). The 2009 Memo<sup>11</sup> states that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, and an approved SIP addressing regional haze.

Missouri meets this requirement through EPA-approved provisions requiring electric generating units (EGUs) in Missouri to comply with the Clean Air Interstate Rule (CAIR) and

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<sup>11</sup> William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards, "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS)," Memorandum to EPA Regional Air Division Directors, Regions I-X, September 25, 2009.



through the limited approval and limited disapproval of Missouri's regional haze SIP. Although Missouri's regional haze SIP has not been fully approved, EPA believes that the infrastructure SIP submission together with previously approved SIP provisions, specifically those provisions that require EGUs to comply with CAIR and the additional measures in the regional haze SIP addressing best available retrofit technology (BART) and reasonable progress requirements for other sources or pollutants, are adequate to demonstrate compliance with prong 4; thus, EPA is proposing to fully approve this aspect of the submission.

Missouri's regional haze SIP relied on the previous incorporation of CAIR into the EPA-approved SIP for Missouri as an alternative to the requirement that regional haze SIPs provide for source-specific BART emission limits for SO<sub>2</sub> and NO<sub>x</sub> emissions from EGUs. At the time the regional haze SIP was being developed, Missouri's reliance on CAIR was fully consistent with EPA's regulations. CAIR, as originally promulgated, requires significant reductions in emissions of SO<sub>2</sub> and NO<sub>x</sub> to limit the interstate transport of these pollutants, and EPA's determination that states could rely on CAIR as an alternative to requiring BART for CAIR-subject EGUs had specifically been

upheld in *Utility Air Regulatory Group v. EPA*, 471 F.3d 1333 (D.C. Cir. 2006). Moreover, the states with Class I areas affected by emissions from sources in Missouri had adopted reasonable progress goals for visibility protection that were consistent with the EGU emission limits resulting from CAIR.

In 2008, however, the D.C. Circuit remanded CAIR back to EPA (see *North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir. 2008)). The Court found CAIR to be inconsistent with the requirements of the CAA (see *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008)), but ultimately remanded the rule to EPA without vacatur because it found that "allowing CAIR to remain in effect until it is replaced by a rule consistent with [the Court's] opinion would at least temporarily preserve the environmental values covered by CAIR" (*North Carolina*, 550 F.3d at 1178).

After the remand of CAIR by the D.C. Circuit and the promulgation by EPA of a new rule—Cross State Air Pollution Rule (CSAPR)—to replace CAIR, EPA issued a limited disapproval and Federal Implementation Plan (FIP) for Missouri regional haze SIP (and other states' regional haze SIPs that relied similarly on CAIR), which merely substituted reliance on CSAPR NO<sub>x</sub> and SO<sub>2</sub> trading programs for EGUs for the SIP's reliance on CAIR because EPA believed that full approval of the SIP was not appropriate

in light of the court's remand of CAIR and the uncertain but limited remaining period of operation of CAIR (77 FR 33642, June 7, 2012). EPA finalized a limited approval of the regional haze SIP, indicating that except for its reliance on CAIR, the SIP met CAA requirements for the first planning period of the regional haze program (77 FR 38007, June 26, 2012).<sup>12</sup>

Since the above-described developments with regard to Missouri's regional haze SIP, the situation has changed. In August 2012, the D.C. Circuit issued a decision to vacate CSAPR (*see EME Homer City v. EPA*, 696 F.3d 7 (D.C. Cir. 2012)). In this decision, the Court ordered EPA to "continue administering CAIR pending the promulgation of a valid replacement." Thus, EPA has been ordered by the Court to develop a new rule, and to continue implementing CAIR in the meantime, and the opinion makes clear that after promulgating that new rule EPA must provide states an opportunity to draft and submit SIPs to implement that rule. CAIR thus cannot be replaced until EPA has promulgated a final rule through a notice-and-comment rulemaking process; states have had an opportunity to draft and submit SIPs; EPA has

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<sup>12</sup> Under CAA sections 301(a) and 110(k)(6) and EPA's long-standing guidance, a limited approval results in approval of the entire SIP submission, even of those parts that are deficient and prevent EPA from granting a full approval of the SIP revision. *Processing of State Implementation Plan (SIP) Revisions*, EPA Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, to Air Division Directors, EPA Regional Offices I-X, September 7, 1992, (1992 Calcagni Memorandum) located at <http://www.epa.gov/ttn/caaa/t1/memoranda/siproc.pdf>.

reviewed the SIPs to determine if they can be approved; and EPA has taken action on the SIPs, including promulgating a FIP, if appropriate.

EPA filed a petition for rehearing of the Court's decision on CSAPR, which was denied by the D.C. Circuit on January 24, 2013. However, based on the current direction from the Court to continue administering CAIR, EPA believes that it is appropriate to rely on CAIR emission reductions as permanent and enforceable for purposes of assessing the adequacy of Missouri's infrastructure SIP with respect to prong 4 while a valid replacement rule is developed and until implementation plans complying with any new rule are submitted by the states and acted upon by EPA or until the court case is resolved in a way that provides direction regarding CAIR and CSAPR.

As neither Missouri nor EPA has taken any action to remove CAIR from the Missouri SIP, CAIR remains part of the EPA-approved SIP and can be considered in determining whether the SIP as a whole meets the requirement of prong 4 of 110(a)(2)(D)(i). EPA is proposing to approve the infrastructure SIP submission with respect to prong 4 because Missouri's regional haze SIP which EPA has given a limited approval, in combination with its SIP provisions to implement CAIR,

adequately prevent sources in Missouri from interfering with measures adopted by other states to protect visibility during the first planning period. While EPA is not at this time proposing to change the June 7, 2012, or June 26, 2012, limited disapproval and limited approval of Missouri's regional haze SIP, EPA expects to propose an appropriate action regarding Missouri's regional haze SIP upon final resolution of *EME Homer City*.

Section 110(a)(2)(D)(ii) also requires that the SIP insure compliance with the applicable requirements of sections 126 and 115 of the CAA, relating to interstate and international pollution abatement, respectively.

Section 126(a) of the CAA requires new or modified sources to notify neighboring states of potential impacts from sources within the state. Missouri regulations require that affected states receive notice prior to the commencement of any construction or modification of a source. Missouri's rule 10 CSR 10-6.060(6), "Construction Permits Required" requires that the review of all PSD permit applications follow the procedures of section (12)(A), Appendix A. Appendix A, in turn, requires that the permitting authority shall issue a draft permit for public comment, with notification to affected states on or before the

time notice is provided to the public. In addition, no Missouri source or sources have been identified by EPA as having any interstate impacts under section 126 in any pending actions relating to any air pollutant.

Section 115 of the CAA authorizes EPA to require a state to revise its SIP under certain conditions to alleviate international transport into another country. There are no final findings under section 115 of the CAA against Missouri with respect to any air pollutant. Thus, the State's SIP does not need to include any provisions to meet the requirements of section 115.

Based upon review of the State's infrastructure SIP submissions for the 1997 and 2006 PM<sub>2.5</sub> NAAQS, and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Missouri's SIP, EPA believes that Missouri has the adequate infrastructure needed to address sections 110(a)(2)(D)(i)(II) - Prongs 3 and 4 and 110(a)(2)(D)(ii) for the 1997 and 2006 PM<sub>2.5</sub> NAAQS. EPA is proposing to approve the February 27, 2007, submission regarding the 1997 PM<sub>2.5</sub> infrastructure SIP requirements and the December 28, 2009, submission regarding the 2006 PM<sub>2.5</sub> infrastructure SIP requirements for this element.

*(E) Adequate authority, resources, implementation, and oversight:* Section 110(a)(2)(E) requires that SIPs provide for the following: (1) necessary assurances that the state (and other entities within the state responsible for implementing the SIP) will have adequate personnel, funding, and authority under State or local law to implement the SIP, and that there are no legal impediments to such implementation; (2) requirements that the state comply with the requirements relating to state boards, pursuant to section 128 of the CAA; and (3) necessary assurances that the state has responsibility for ensuring adequate implementation of any plan provision for which it relies on local governments or other entities to carry out that portion of the plan.

(1) Section 110(a)(2)(E)(i) requires states to establish that they have adequate personnel, funding and authority. With respect to adequate authority, we have previously discussed Missouri's statutory and regulatory authority to implement the 1997 and 2006 PM<sub>2.5</sub> NAAQS, primarily in the discussion of section 110(a)(2)(A) above. Neither Missouri nor EPA has identified any legal impediments in the State's SIP to implementation of these NAAQS.

With respect to adequate resources, MDNR asserts that it has adequate personnel to implement the SIP. The infrastructure SIP submission for both the 1997 and 2006 PM<sub>2.5</sub> NAAQS describes the regulations governing the various functions of personnel within the Air Pollution Control Program, including the Administration, Technical Support (Air Quality Analysis), Planning, Enforcement, and Permit Sections of the program (10 CSR 10-1.010(2)(D) "Ambient Air Quality Standards").

With respect to funding, the Air Conservation Law requires the MACC to establish an annual emissions fee for sources in order to fund the reasonable costs of administering various air pollution control programs. RSMO section 643.079 of the Air Conservation Law provides for the deposit of the fees into various subaccounts (e.g., a subaccount for the Title V operating permit program used for Title V implementation activities; a subaccount for non-Title V air pollution control program activities). The state uses funds in the non-Title V subaccounts, along with General Revenue funds and EPA grants under, for example, sections 103 and 105 of the CAA, to fund the programs. EPA conducts periodic program reviews to ensure that the state has adequate resources and funding to, among other things, implement the SIP.



(2) Conflict of interest provisions - Section 128

Section 110(a)(2)(E)(ii) requires that each state SIP meet the requirements of section 128, relating to representation on state boards and conflicts of interest by members of such boards. Section 128(a)(1) requires that any board or body which approves permits or enforcement orders under the CAA must have at least a majority of members who represent the public interest and do not derive any "significant portion" of their income from persons subject to permits and enforcement orders under the CAA. Section 128(a)(2) requires that members of such a board or body, or the head of an agency with similar powers, adequately disclose any potential conflicts of interest. In 1978, EPA issued a guidance memorandum recommending ways that states could meet the requirements of section 128, including suggested interpretations of certain terms in section 128.<sup>13</sup> EPA has not issued further guidance or regulations of general applicability on the subject since that time. However, EPA has recently proposed certain interpretations of section 128 as part of its actions on other infrastructure SIPs consistent with the statutory requirements (see, e.g., (77 FR 44555, July 30, 2012) and (77 FR 66398, November 5, 2012)). We are now proposing these

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<sup>13</sup> See Memorandum from David O. Bickart to Regional Air Directors, "Guidance to States for Meeting Conflict of Interest Requirements of Section 128," Suggested Definitions, March 2, 1978.

same interpretations in relation to the Missouri SIP. On August 8, 2012, EPA received Missouri's SIP revision that addresses the section 128 requirements. In today's action, we are also proposing to approve Missouri's August 8, 2012, submission related to sections 110(a)(2)(E)(ii) and 128 of the CAA. EPA and Missouri have worked to assure that the State's SIP correctly addresses these requirements.

EPA's analysis consisted of review of Missouri's August 8, 2012, SIP submission and EPA's additional review of Missouri statutes and authorities. The first step in the analysis included identifying boards, bodies and persons responsible for approving permits and enforcement orders and determining the applicability of the section 128 requirements to these entities. Section 643.050 of the Air Conservation Law authorizes the MACC to approve enforcement orders. In addition, Missouri Chapter 1 rule "General Organization" (2)(B) gives the Director of MDNR the authority to issue orders and act upon permit applications. Therefore, at a minimum the MACC must satisfy the requirements of sections 128(a)(1) and (2), and as the head of an executive agency with similar powers, the Director of MDNR must satisfy the requirements of section 128(a)(2).

Section 128(a)(1) contains two separate requirements applicable to any board or body which approves permits or enforcement orders under the CAA. First, a majority of members of the board or body must "represent the public interest" ("public interest" requirement). Second, a majority of members must "not derive any significant portion of their income from persons subject to permits or enforcement orders" ("significant income" requirement). The specific provisions of Missouri's Air Conservation Law submitted as SIP revisions are relevant to the requirements of CAA section 128(a)(1).

With respect to the "public interest" requirement, section 643.040.2 of the Air Conservation Law establishes that the MACC members must "be representative of the general interest of the public." With respect to the "significant income" requirement, both sections 643.040.2 and 105.450 of Missouri's Air Conservation Law were submitted to EPA for inclusion in the SIP. Section 643.040.2 states that "the governor shall not appoint any other person who has a substantial interest as defined in 105.450" in any business entity regulated under the Air Conservation Law or any business entity which would be regulated under the Air Conservation Law if located in Missouri. "Substantial interest," in turn, is defined in section 105.450

as ownership by the individual, the individual's spouse, or the individual's dependent children, whether singularly or collectively, directly or indirectly, of ten percent or more of any business entity, or of an interest having a value of ten thousand dollars or more, or the receipt by an individual, the individual's spouse or the individual's dependent children, whether singularly or collectively, of a salary, gratuity, or other compensation or remuneration of five thousand dollars, or more, per year from any individual, partnership, organization, or association with any calendar year. The provisions at sections 643.040 and 105.450 have both been submitted for inclusion in to the SIP. In addition, section 105.463 which has also been submitted for inclusion in to the SIP, requires members of the commission to file a financial interest statement.

To satisfy section 128(a)(2) of the CAA, Missouri's August 8, 2012, submission identified RsMO section 643.040.2, which establishes "rules of procedure which specify when members shall exempt themselves from participating in discussions and from voting on issues before the commission due to potential conflict of interest." In addition, RsMO sections 105.452 and 105.454 identify "prohibited acts" that apply to both elected or

appointed officials and to state employees which relate to disclosure of conflicts of interest and financial gain. As an example of a "prohibited act," elected or appointed officials or employees of Missouri shall not act (or refrain from acting in any capacity in which she is lawfully empowered to act) "by reason of any payment, offer to pay, promise to pay, or receipt of anything of actual pecuniary value" paid or received to herself or any third person in relationship to or as a condition of the performance of an official act (RsMO 105.452.1(1)). These officials or employees are also prohibited from using or disclosing confidential information obtained in the course of or by reason of her employment or official capacity in any manner with intent to result in financial gain for herself, her spouse, her dependent child, or any business with which she is associated (RsMO 105.452.1(2), (3)).

Chapter 1 Missouri State regulation "Commission Voting and Meeting Procedures" (1) and (2) also further require disclosure of conflicts of interest and require members with conflicts of interest to be excluded from voting on the matter at issue, unless that member receives a determination from the MACC that the interest is "not so substantial as to be deemed likely to affect the integrity of the services which the state expects

from commission members." Finally, RsMO sections 105.466 and 105.472 include applicable exemptions to the "prohibited acts" identified in RsMO sections 105.450 to 105.458 and 105.462 to 105.468 and information regarding complaints about any violations of these prohibitions related to boards and executives. All of these provisions have been submitted by Missouri for inclusion in to the SIP.

As it relates to appointed public officials, such as the Director of MDNR, the provisions as described above in sections 105.452 and 105.454 also apply to heads of the executive agency.

EPA believes that the above identified relevant sections of Missouri's Air Conservation Law and the Missouri air regulations directly address the provisions related to sections 128(a)(1) and (2) of the CAA. We propose to approve the following provisions in to the Missouri SIP, as they strengthen the SIP with respect to the conflict of interest requirement of CAA section 128:

- RsMO 643.040.2
- RsMO 105.450
- RsMO 105.452
- RsMO 105.454
- RsMO 105.462
- RsMO 105.463
- RsMO 105.466
- RsMO 105.472
- 10 CSR 10-1.020(1) and (2)

(3) With respect to assurances that the state has responsibility to implement the SIP adequately when it authorizes local or other agencies to carry out portions of the plan, RsMO section 643.190 designates the MDNR as the air pollution control agency "for all purposes" of the CAA. Although RsMO section 643.140 authorizes the MACC to grant local governments such as cities or counties authority to carry out their own air pollution control programs, the MACC retains authority to enforce the provisions of Missouri's Air Conservation Law in these local areas, notwithstanding any such authorization (RsMO 643.140.4). The MACC may also suspend or repeal the granting of authority if the local government is enforcing any local rules in a manner inconsistent with state law (RsMO 643.140.10).

There are three local air agencies that conduct air quality work in Missouri: Kansas City, Springfield/Greene County and St. Louis County. The MDNR's Air Pollution Control Program has a signed Memorandum of Understanding (MOU) with Kansas City and Springfield/Greene County and a draft agreement for St. Louis County (to be finalized) which outlines the responsibilities for air quality activities with each local agency. The MDNR Air Program oversees the activities of the local agencies to ensure

adequate implementation of the Missouri SIP. EPA conducts reviews of the local program activities in conjunction with its oversight of the state program.

Based upon review of the State's infrastructure SIP submissions for the 1997 and 2006 PM<sub>2.5</sub> NAAQS and the August 8, 2012, SIP submission, and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Missouri's SIP, EPA believes that Missouri has the adequate infrastructure needed to address section 110(a)(2)(E) for the 1997 and 2006 PM<sub>2.5</sub> NAAQS and is proposing to approve the February 27, 2007, submission regarding the 1997 PM<sub>2.5</sub> infrastructure SIP requirements, the December 28, 2009, submission regarding the 2006 PM<sub>2.5</sub> infrastructure SIP requirements, and the August 8, 2012, submission relating to section 128 requirements.

*(F) Stationary source monitoring system:* Section 110(a)(2)(F) requires states to establish a system to monitor emissions from stationary sources and to submit periodic emission reports. Each SIP shall require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources, to monitor emissions from such sources.



The SIP shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and requires that the state correlate the source reports with emission limitations or standards established under the CAA. These reports must be made available for public inspection at reasonable times.

To address this element, RsMO section 643.050.1(3)(a) of the Air Conservation Law authorizes the MACC to require persons engaged in operations which result in air pollution to monitor or test emissions and to file reports containing information relating to rate, period of emission and composition of effluent. Missouri rule 10 CSR 10-6.030 "Sampling Methods for Air Pollution Sources" incorporates various EPA reference methods for sampling and testing source emissions, including methods for PM emissions. The Federal test methods are in 40 CFR part 51, Appendix M and part 60, Appendix A.

Missouri rule 10 CSR 10-6.110 "Reporting & Emission Data, Emission Fees, and Process Information" also requires monitoring of emissions and filing of periodic reports on emissions (see (4)(A) for the specific information required). Missouri uses this information to track progress towards maintaining the NAAQS, developing control and maintenance strategies,

identifying sources and general emission levels, and determining compliance with emission regulations and additional EPA requirements. Missouri makes this information available to the public (10 CSR 10-6.110(3)(D) "Reporting & Emission Data, Emission Fees, and Process Information"). Missouri rule 10 CSR 10-6.210 "Confidential Information," specifically excludes emissions data from confidential treatment. Under that rule emissions data includes the results of any emissions testing or monitoring required to be reported by sources under Missouri's air pollution control rules (10 CSR 10-6.210(3)(B)2).

Based upon review of the State's infrastructure SIP submissions for the 1997 and 2006 PM<sub>2.5</sub> NAAQS, and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Missouri's SIP, EPA believes that Missouri has the adequate infrastructure needed to address section 110(a)(2)(F) for the 1997 and 2006 PM<sub>2.5</sub> NAAQS and is proposing to approve the February 27, 2007, submission regarding the 1997 PM<sub>2.5</sub> infrastructure SIP requirements and the December 28, 2009, submission regarding the 2006 PM<sub>2.5</sub> infrastructure SIP requirements for this element.

(G) *Emergency authority:* Section 110(a)(2)(G) requires SIPs to provide for authority to address activities causing

imminent and substantial endangerment to public health or welfare or the environment (comparable to the authorities provided in Section 303 of the CAA), and to include contingency plans to implement such authorities as necessary.

RsMO section 643.090.1 of the Air Conservation Law authorizes the MACC or the director of MDNR to declare an emergency where the ambient air, "due to meteorological conditions and a buildup of air contaminants" in Missouri, may present an "emergency risk to the public health, safety, or welfare." The MACC or director may, with the written approval of the governor, by order prohibit, restrict or condition all sources of air contaminants contributing to the emergency condition, during such periods of time necessary to alleviate or lessen the effects of the emergency condition. The statute also enables the MACC to promulgate implementing regulations. Even in the absence of an emergency condition, RsMO section 643.090.2 also authorizes the MACC or the director to issue "cease and desist" orders to any specific person who is either engaging or may engage in activities which involve a significant risk of air contamination or who is discharging into the ambient air any air contaminant, and such activity or discharge presents a clear and present danger to public health or welfare.

Missouri rule 10 CSR 10-6.130 "Controlling Emissions During Episodes of High Air Pollution Potential" includes action levels and contingency measures for PM<sub>2.5</sub> and other pollutants. This rule specifies the conditions that establish an air pollution alert and the associated procedures and emissions reduction objectives for dealing with each.

With respect to contingency plan requirements of section 110(a)(2)(G), EPA has issued guidance making recommendations for how states may elect to approach this issue. In that guidance, EPA recommended that, where a state can demonstrate that PM<sub>2.5</sub> levels have remained below 140.4 micrograms per cubic meter, the state is not required to develop a contingency plan to satisfy element (G). EPA believes that this is a reasonable interpretation of the statute and addresses the PM<sub>2.5</sub> NAAQS in a way analogous to other NAAQS pollutants. PM<sub>2.5</sub> monitoring data from monitors across the state have shown that 24-hour PM<sub>2.5</sub> values have never exceeded 140.4 micrograms per cubic meter in Missouri. Therefore, Missouri is not required to develop a contingency plan for PM<sub>2.5</sub> at this time.

That said, Missouri's regulations provide for contingency plans (or alert plans) to be implemented if an area's Air Quality Alert value exceeds 200 micrograms per cubic meter.

These plans must include provisions for reducing emissions, such as curtailing production processes, diverting power generation to facilities outside of the alert area, and stoppage of waste disposal practices or open burning. Missouri rule 10 CSR 10-6.130(3)(D)4 "Controlling Emissions During Episodes of High Air Pollution Potential."

Based on a review of these regulatory requirements (which have previously been approved by EPA as part of Missouri's SIP (see 50 FR 41348), and a comparison of it to the requirements in 40 CFR 51.150-51.153, EPA believes that the Missouri SIP adequately addresses section 110(a)(2)(G) for the 1997 and 2006 PM<sub>2.5</sub> NAAQS and is proposing to approve the February 27, 2007, submission regarding the 1997 PM<sub>2.5</sub> infrastructure SIP requirements and the December 28, 2009, submission regarding the 2006 PM<sub>2.5</sub> infrastructure SIP requirements for this element.

*(H) Future SIP revisions:* Section 110(a)(2)(H) requires states to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate to attain the NAAQS.

In addition to the MACC's general enabling authority in RSMO section 643.050 of the Air Conservation Law, discussed

previously in element (A), section 643.055.1 grants the MACC and MDNR authority to promulgate rules and regulations to establish standards and guidelines, to ensure that Missouri complies with the provisions of the Federal CAA. Missouri's Chapter 1 state rule "General Organization" (2) grants similar powers to MDNR. This includes the authority to submit SIP revisions to the EPA for approval as necessary to respond to a revised NAAQS and to respond to EPA findings of substantial inadequacy (e.g., 71 FR 46860, August 15, 2006), in which EPA approved Missouri rules promulgated in response to EPA's NO<sub>x</sub> SIP call for Missouri and other states).

Based upon review of the State's infrastructure SIP submissions for the 1997 and 2006 PM<sub>2.5</sub> NAAQS, and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Missouri's SIP, EPA believes that Missouri has adequate authority to address section 110(a)(2)(H) for the 1997 and 2006 PM<sub>2.5</sub> NAAQS and is proposing to approve the February 27, 2007, submission regarding the 1997 PM<sub>2.5</sub> infrastructure SIP requirements and the December 28, 2009, submission regarding the 2006 PM<sub>2.5</sub> infrastructure SIP requirements for this element.

*(I) Nonattainment areas:* Section 110(a)(2)(I) requires that in the case of a plan or plan revision for areas designated as nonattainment areas, states must meet applicable requirements of part D of the CAA, relating to SIP requirements for designated nonattainment areas.

As noted earlier, EPA does not expect infrastructure SIP submissions to address subsection (I). The specific SIP submissions for designated nonattainment areas, as required under CAA title I, part D, are subject to different submission schedules than those for section 110 infrastructure elements. Instead, EPA will take action on part D attainment plan SIP submissions through a separate rulemaking governed by the requirements for nonattainment areas, as described in part D.

*(J) Consultation with government officials, public notification, PSD and visibility protection:* Section 110(a)(2)(J) requires SIPs to meet the applicable requirements of the following CAA provisions: (1) section 121, relating to interagency consultation regarding certain CAA requirements; (2) section 127, relating to public notification of NAAQS exceedances and related issues; and (3) part C of the CAA, relating to prevention of significant deterioration of air quality and visibility protection.

(1) With respect to interagency consultation, the SIP should provide a process for consultation with general-purpose local governments, designated organizations of elected officials of local governments, and any Federal Land Manager having authority over Federal land to which the SIP applies. Section 643.050.3 of the Missouri Air Conservation Law requires the MACC to consult and cooperate with other Federal and state agencies, and with political subdivisions, for the purpose of prevention, abatement, and control of air pollution. Missouri also has appropriate interagency consultation provisions in its preconstruction permit program. For instance, Missouri rule 10 CSR 10-6.060(12)(B)2.E "Construction Permits Required" requires that when a permit goes out for public comment, the permitting authority must provide notice to local air pollution control agencies, the chief executive of the city and county where the installation or modification would be located, any comprehensive regional land use planning agency, any state air program permitting authority, and any Federal Land Manager whose lands may be affected by emissions from the installation or modification.

(2) With respect to the requirements for public notification in section 127, the infrastructure SIP should



provide citations to regulations in the SIP requiring the air agency to regularly notify the public of instances or areas in which any NAAQS are exceeded; advise the public of the health hazard associated with such exceedances; and enhance public awareness of measures that can prevent such exceedances and of ways in which the public can participate in the regulatory and other efforts to improve air quality. Missouri rule 10 CSR 10-6.130 "Controlling Emissions During Episodes of High Air Pollution Potential," discussed previously in connection with the state's authority to address emergency episodes, contains provisions for public notification of elevated PM<sub>2.5</sub> and other air pollutant levels, and measures which can be taken by the public to reduce concentrations. In addition, information regarding air pollution and related issues, is provided on an MDNR website, <http://www.dnr.missouri.gov/env/apcp/index.html>.

(3) With respect to the applicable requirements of part C of the CAA, relating to prevention of significant deterioration of air quality and visibility protection, we note in section VII of this rulemaking how the Missouri SIP meets the PSD requirements, incorporating the federal rule by reference. With respect to the visibility component of section 110(a)(2)(J), EPA recognizes that states are subject to visibility and regional

haze program requirements under part C of the CAA. However, when EPA establishes or revises a NAAQS, these visibility and regional haze requirements under part C do not change. EPA believes that there are no new visibility protection requirements under part C as a result of a revised NAAQS. Therefore, there are no newly applicable visibility protection obligations pursuant to element J after the promulgation of a new or revised NAAQS. Missouri has submitted a SIP revision to satisfy the requirements of CAA sections 169A and 169B, and the regional haze and BART rules contained in 40 CFR 51.308. On June 7, 2012, EPA published a final rulemaking regarding Missouri's regional haze program consisting of a limited disapproval and FIP (see 77 FR 33642). In addition, on June 26, 2012, EPA published a final rulemaking regarding Missouri's regional haze program consisting of a limited approval (see 77 FR 38007). In EPA's view, the current status of Missouri's regional haze SIP as having not been fully approved is not a bar to full approval of the infrastructure SIP submission with respect to the visibility protection aspect of 110(a)(2)(J), and EPA is proposing to fully approve the infrastructure SIP for this aspect. While EPA is not at this time proposing to change the June 26, 2012, limited approval or the June 7, 2012, limited

disapproval of Missouri's regional haze SIP itself, EPA expects to address the approval status of the regional haze SIP upon final resolution of *EME Homer City*.

Based upon review of the State's infrastructure SIP submissions for the 1997 and 2006 PM<sub>2.5</sub> NAAQS, and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Missouri's SIP, EPA believes that Missouri has met the applicable requirements of section 110(a)(2)(J) for the 1997 and 2006 PM<sub>2.5</sub> NAAQS in the state and is therefore proposing to approve the February 27, 2007, submission regarding the 1997 PM<sub>2.5</sub> infrastructure SIP requirements and the December 28, 2009, submission regarding the 2006 PM<sub>2.5</sub> infrastructure SIP requirements for this element.

(K) *Air quality and modeling/data*: Section 110(a)(2)(K) requires that SIPs provide for performing air quality modeling, as prescribed by EPA, to predict the effects on ambient air quality of any emissions of any NAAQS pollutant, and for submission of such data to EPA upon request.

Missouri has authority to conduct air quality modeling and report the results of such modeling to EPA. Section 643.050 of the Air Conservation Law provides the MACC with the general authority to develop a general comprehensive plan to prevent,

abate and control air pollution. Along with section 643.055, which grants the MACC the authority to promulgate rules and regulations to establish standards and guidelines to ensure that Missouri is in compliance with the provisions of the CAA, EPA believes MDNR has the authority to conduct modeling to address NAAQS issues. As an example of regulatory authority to perform modeling for purposes of determining NAAQS compliance, Missouri regulation 10 CSR 10-6.060(12)(F) "Construction Permits Required" requires the use of EPA-approved air quality models (e.g., those found in 40 CFR part 51, Appendix W) for construction permitting. Rule 10 CSR 10-6.110(4) "Reporting & Emission Data, Emission Fees, and Process Information" requires specified sources of air pollution to report emissions to MDNR, which among other purposes may be utilized in modeling analyses. These data are available to any member of the public, upon request (10 CSR 10-6.110(3)(D)).

Based upon review of the state's infrastructure SIP submissions for the 1997 and 2006 PM<sub>2.5</sub> NAAQS, and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Missouri's SIP, EPA believes that Missouri has the adequate infrastructure needed to address section 110(a)(2)(K) for the 1997 and 2006 PM<sub>2.5</sub> NAAQS

and is proposing to approve the February 27, 2007, submission regarding the 1997 PM<sub>2.5</sub> infrastructure SIP requirements and the December 28, 2009, submission regarding the 2006 PM<sub>2.5</sub> infrastructure SIP requirements for this element.

*(L) Permitting Fees:* Section 110(a)(2)(L) requires SIPs to require each major stationary source to pay permitting fees to the permitting authority, as a condition of any permit required under the CAA, to cover the cost of reviewing and acting upon any application for such a permit, and, if the permit is issued, the costs of implementing and enforcing the terms of the permit. The fee requirement applies until a fee program established by the state pursuant to Title V of the CAA, relating to operating permits, is approved by EPA.

Section 643.079 of the Air Conservation Law provides authority for MDNR to collect permit fees, including Title V fees. EPA approved Missouri's Title V program in May 1997 (see 62 FR 26405). EPA is reviewing the Missouri Title V program, including Title V fee structure, separately from this proposed action. Because the Title V program and associated fees legally are not part of the SIP, the infrastructure SIP action we are proposing today does not preclude EPA from taking future action regarding Missouri's Title V program.

Therefore, EPA believes that the requirements of section 110(a)(2)(L) are met and is proposing to approve the February 27, 2007, submission regarding the 1997 PM<sub>2.5</sub> infrastructure SIP requirements and the December 28, 2009, submission regarding the 2006 PM<sub>2.5</sub> infrastructure SIP requirements for this element.

*(M) Consultation/participation by affected local entities:* Section 110(a)(2)(M) requires SIPs to provide for consultation and participation by local political subdivisions affected by the SIP.

Section 643.050.3 of the Air Conservation Law requires that the MACC encourage political subdivisions to handle air pollution control problems within their respective jurisdictions to the extent possible and practicable, and to provide assistance to those political subdivisions. The MACC is also required to advise, consult and cooperate with other political subdivisions in Missouri. RSMO section 643.140 provides the mechanism for local political subdivisions to enact and enforce their own air pollution control regulations, subject to the oversight of the MACC. The MDNR's Air Pollution Control Program has a signed Memorandum of Understanding (MOU) with Kansas City and Springfield/Greene County and a draft agreement with St. Louis County (to be finalized) which outlines the

responsibilities for air quality activities with each local agency. In addition, MDNR participates in community meetings and consults with and participates in interagency consultation groups such as the Metropolitan Planning Organizations in both Kansas City and St. Louis. In Kansas City, MDNR works with the Mid-America Regional Council and in St. Louis, MDNR works with East-West Gateway Coordinating Council of Governments.

Based upon review of the State's infrastructure SIP submissions for the 1997 and 2006 PM<sub>2.5</sub> NAAQS, and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Missouri's SIP, EPA believes that Missouri has the adequate infrastructure needed to address section 110(a)(2)(M) for the 1997 and 2006 PM<sub>2.5</sub> NAAQS and is proposing to approve the February 27, 2007, submission regarding the 1997 PM<sub>2.5</sub> infrastructure SIP requirements and the December 28, 2009, submission regarding the 2006 PM<sub>2.5</sub> infrastructure SIP requirements for this element.

#### **VI. What are the Requirements of the PM<sub>2.5</sub> PSD Increment-SILs-SMC Rule for PSD SIP Programs?**

The 2010 PM<sub>2.5</sub> Increment-SILs-SMC Rule provided additional regulatory requirements under the PSD SIP program regarding the implementation of the PM<sub>2.5</sub> NAAQS (75 FR 64864). As a result, the

rule required states to submit SIP revisions to adopt the required PSD increments by July 20, 2012 (75 FR 64864). Specifically, the rule required a state's submitted PSD SIP revision to adopt and submit for EPA approval the PM<sub>2.5</sub> increments pursuant to section 166(a) of the CAA to prevent significant deterioration of air quality in areas meeting the NAAQS.

That rule also permitted states, at their discretion, to choose to adopt and submit for EPA approval into the SIP SILs, used as a screening tool (by a major source subject to PSD), to evaluate the impact a proposed major source or modification may have on the NAAQS or PSD increment; and a SMC (also a screening tool), used by a major source subject to PSD to determine the subsequent level of data gathering required for a PSD permit application for emissions of PM<sub>2.5</sub>. More detail on the PM<sub>2.5</sub> PSD Increment-SILs-SMC Rule can be found at 75 FR 64864. In regards to the SILs and SMC provisions of the 2010 PM<sub>2.5</sub> rule, on January 22, 2013, the U.S. Court of Appeals for the District of Columbia, in *Sierra Club v. EPA*, No. 10-1413 (filed Dec. 17, 2010), issued a judgment that, *inter alia*, vacated and remanded the provisions concerning implementation of the PM<sub>2.5</sub> SILs and



vacated the provisions adding the PM<sub>2.5</sub> SMC that were promulgated as part of the 2010 PM<sub>2.5</sub> PSD Rule.

Accordingly, the only remaining requirements from the 2010 rule are the PM<sub>2.5</sub> increment and associated provisions discussed below. Under section 165(a)(3) of the CAA, a PSD permit applicant must demonstrate that emissions from the proposed construction and operation of a facility "will not cause, or contribute to, air pollution in excess of any maximum allowable increase or allowable concentration for any pollutant." In other words, when a source applies for a PSD SIP permit to emit a regulated pollutant in an attainment or unclassifiable area, the permitting authority implementing the PSD SIP must determine if emissions of the regulated pollutant from the source will cause significant deterioration in air quality. Significant deterioration occurs when the amount of the new pollution exceeds the applicable PSD increment, which is the "maximum allowable increase" of an air pollutant allowed to occur above the applicable baseline concentration<sup>14</sup> for that pollutant. PSD increments prevent air quality in attainment and unclassifiable areas from deteriorating up to or beyond the level set by the NAAQS. Therefore, an increment is the mechanism used to estimate

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<sup>14</sup> Section 169(4) of the CAA provides that the baseline concentration of a pollutant for a particular baseline area is generally the same air quality at the time of the first application for a PSD permit in the area.

"significant deterioration" of air quality for a pollutant in an area.

For PSD baseline purposes, a baseline area for a particular pollutant emitted from a source includes the attainment or unclassifiable/attainment area in which the source is located, as well as any other attainment or unclassifiable/attainment area in which the source's emissions of that pollutant are projected (by air quality modeling) to result in an ambient pollutant increase of at least  $1 \text{ ug/m}^3$  (annual average) (40 CFR 51.166(b)(15)(i) and (ii)). Under EPA's existing regulations, the establishment of a baseline area for any PSD increment results from the submission of the first complete PSD permit application after a trigger date (which for  $\text{PM}_{2.5}$  is defined as October 20, 2011, by regulation) and is based on the location of the proposed source and its emissions impact on the area. Once the baseline area is established, subsequent PSD sources locating in that area must consider that a portion of the available increment may have already been consumed by previous emissions increases. In general, the submittal date of the first complete PSD permit application in a particular area is the

operative "baseline date."<sup>15</sup> On or before the date of the first complete PSD application, emissions generally are considered to be part of the baseline concentration, except for certain emissions from major stationary sources. Most emissions increases that occur after the baseline date will be counted toward the amount of increment consumed. Similarly, emissions decreases after the baseline date restore or expand the amount of increment that is available (see 75 FR 64864). As described in the PM<sub>2.5</sub> PSD Increment-SILs-SMC rule, pursuant to the authority under section 166(a) of the CAA, EPA promulgated numerical increments for PM<sub>2.5</sub> as a new pollutant<sup>16</sup> for which the NAAQS were established after August 7, 1977,<sup>17</sup> and derived 24-hour and annual PM<sub>2.5</sub> increments for the three area classifications (Class I, II and III) using the "contingent safe harbor" approach (75 FR at 64869, and table at 40 CFR 51.166(c)(1)).

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<sup>15</sup> Baseline dates are pollutant specific. That is, a complete PSD application establishes the baseline date only for those regulated NSR pollutants that are projected to be emitted in significant amounts (as defined in the regulations) by the applicant's new source or modification. Thus, an area may have different baseline dates for different pollutants.

<sup>16</sup> EPA generally characterized the PM<sub>2.5</sub> NAAQS as a NAAQS for a new indicator of PM. EPA did not replace the PM<sub>10</sub> NAAQS with the NAAQS for PM<sub>2.5</sub> when the PM<sub>2.5</sub> NAAQS were promulgated in 1997. Rather, EPA retained the annual and 24-hour NAAQS for PM<sub>10</sub> as if PM<sub>2.5</sub> was a new pollutant even though EPA had already developed air quality criteria for PM generally. 75 FR 64864.

<sup>17</sup> EPA interprets 166(a) to authorize EPA to promulgate pollutant-specific PSD regulations meeting the requirements of section 166(c) and 166(d) for any pollutant for which EPA promulgates a NAAQS after 1977.

In addition to PSD increments for the 2006 PM<sub>2.5</sub> NAAQS, the PM<sub>2.5</sub> PSD Increment-SILs-SMC rule amended the definition at 40 CFR 51.166 and 40 CFR 52.21 for "major source baseline date" and "minor source baseline date" to establish the PM<sub>2.5</sub> NAAQS specific dates (including trigger dates) associated with the implementation of PM<sub>2.5</sub> PSD increments. See the PSD Increment-SILs-SMC rule for a more detailed discussion on the amendments to these definitions (75 FR 64864). In accordance with section 166(b) of the CAA, EPA required the states to submit revised implementation plans adopting the PM<sub>2.5</sub> PSD increments to EPA for approval within twenty one months from promulgation of the final rule (*i.e.*, by July 20, 2012). Each state was responsible for determining how increment consumption and the setting of the minor source baseline date for PM<sub>2.5</sub> would occur under its own PSD program. Regardless of when a state begins to require PM<sub>2.5</sub> increment analysis and how it chooses to set the PM<sub>2.5</sub> minor source baseline date, the emissions from sources subject to PSD for PM<sub>2.5</sub> for which construction commenced after October 20, 2010 (major source baseline date) consume the PM<sub>2.5</sub> increment and therefore should be included in the increment analyses occurring after the minor source baseline date is established for an area under the state's revised PSD SIP program.

**VII. How Does the September 5, 2012 Missouri PSD Submission Satisfy the PM<sub>2.5</sub> PSD Increment-SILs-SMC Rule?**

To address the requirements of EPA's October 20, 2010, PM<sub>2.5</sub> PSD Increment-SILs-SMC Rule, Missouri submitted a SIP revision received by EPA on September 5, 2012, which updated its PSD rules to establish the allowable PM<sub>2.5</sub> increments, the optional screening tools (SILs), and significant monitoring concentrations (SMCs). On March 19, 2013, Missouri amended and clarified its submission so that it was no longer intending to include specific provisions relating to the SILs and SMC affected by the January 22, 2013, court decision referenced above. Therefore, in today's action, EPA is proposing to approve portions of the SIP revision which adopt PSD increments for the PM<sub>2.5</sub> annual and 24-hour NAAQS pursuant to section 166(a) of the CAA only. Our analysis of the SIP revision follows.

Specifically, regarding the PSD increments, the submitted SIP revision changes include: 1) the PM<sub>2.5</sub> increments as promulgated at 40 CFR 51.166(c)(1) and (p)(4) (for Class I variances) and 2) amendments to the terms "major source baseline date" (at 40 CFR 51.166(b)(14)(i)(c)) and 40 CFR 52.21(b)(14)(i)(c)), "minor source baseline date" (including establishment of the "trigger date") and "baseline area" (as

amended at 40 CFR 51.166(b)(15)(i) and (ii) and 40 CFR 52.21(b)(15)(i)). In the September 5, 2012, SIP revision, Missouri incorporates by reference into the SIP the particular definitions from 40 CFR part 51 as referenced above through July 1, 2011. Missouri updated Table 1 - Ambient Air Increment Table to adopt the increments as described above in Class I, II, and III areas. Missouri has also updated Table 2 - Significant Monitoring Concentrations for PM<sub>2.5</sub> and Table 4 Significant Levels for PM<sub>2.5</sub>.

As described under element C in section V of this rulemaking, states had an obligation to address condensable PM emissions as a part of the 2008 PM<sub>2.5</sub> NSR implementation rule. In Missouri's SIP submission from September 5, 2012, Missouri incorporated by reference EPA's definition for regulated NSR pollutant (formerly at 40 CFR 51.166(b)(49)(vi)), including the term "particulate matter emissions," as inadvertently promulgated in the 2008 NSR Rule. EPA is, however, proposing to approve into the Missouri SIP the requirement that condensable PM be accounted for in applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> because it is more stringent than the Federal requirement. Missouri can

choose to initiate further rulemaking to ensure consistency with Federal requirements.

In today's action, EPA is proposing to approve Missouri's September 5, 2012, revision to address the PM<sub>2.5</sub> PSD increment provisions promulgated in the PM<sub>2.5</sub> PSD Increments SILs-SMC rule and the obligation to address condensable PM emissions as a part of the 2008 PM<sub>2.5</sub> NSR implementation rule except as identified in Missouri's letter where Missouri amended and clarified its submission so that it was no longer intending to include specific provisions relating to the SILs and SMC affected by the January 22, 2013, court decision referenced above. As noted in EPA's April 16, 2012, final action on Missouri's PSD program (77 FR 22500), provisions of the incorporated 2002 NSR reform rule relating to the Clean Unit Exemption, Pollution Control Projects (PCPs), and exemption from the recordkeeping provisions for certain sources using the actual-to-projected-actual emissions projections test are not SIP approved because in 2005 the D.C. Circuit Court vacated portions of the rule pertaining to clean units, PCPs, and remanded portions of the rule regarding recordkeeping. In addition, EPA did not approve Missouri's rule incorporating EPA's 2007 revision of the definition of "chemical

processing plants" (the "Ethanol Rule,") (72 FR 24060, May 1,

2007) or EPA's 2008 "fugitive emissions rule" (73 FR 77882,

December 19, 2008). Otherwise, Missouri's revisions also incorporate by reference the other provisions of 40 CFR 52.21 as in effect on July 1, 2011.

**VIII. What are the Additional Provisions of the September 5, 2012, SIP Submission that EPA is Proposing to Take Action On?**

Within Missouri's September 5, 2012, SIP submission, Missouri amended rule 10 CSR 10-6.060 "Construction Permits Required" to defer the application of the PSD permitting requirements to carbon dioxide emissions from bioenergy and other biogenic stationary sources pursuant to the July 20, 2011, EPA final rulemaking "Deferral for Carbon Dioxide (CO<sub>2</sub>) Emissions from Bioenergy and other Biogenic Sources Under the Prevention of Significant Deterioration (PSD) and Title V Programs" (see 76



FR 43490). The Biomass Deferral delays until July 21, 2014, the consideration of CO<sub>2</sub> emissions from bioenergy and other biogenic sources (hereinafter referred to as "biogenic CO<sub>2</sub> emissions") when determining whether a stationary source meets the PSD and Title V applicability thresholds, including those for the application of Best Available Control Technology (BACT). Stationary sources that combust biomass (or otherwise emit biogenic CO<sub>2</sub> emissions) and construct or modify during the deferral period will avoid the application of PSD to the biogenic CO<sub>2</sub> emissions resulting from those actions. The deferral applies only to biogenic CO<sub>2</sub> emissions and does not affect non-GHG pollutants or other GHG's (e.g., methane (CH<sub>4</sub>) and nitrous oxide (N<sub>2</sub>O)) emitted from the combustion of biomass fuel. Also, the deferral only pertains to biogenic CO<sub>2</sub> emissions in the PSD and Title V programs and does not pertain to any other EPA programs such as the GHG Reporting Program. Biogenic CO<sub>2</sub> emissions are defined as emissions of CO<sub>2</sub> from a stationary source directly resulting from the combustion or decomposition of biologically-based materials other than fossil fuels and mineral sources of carbon. Examples of "biogenic CO<sub>2</sub> emissions" include, but are not limited to:

- CO<sub>2</sub> generated from the biological decomposition of waste in landfills, wastewater treatment or manure management processes;
- CO<sub>2</sub> from the combustion of biogas collected from biological decomposition of waste in landfills, wastewater treatment or manure management processes;
- CO<sub>2</sub> from fermentation during ethanol production or other industrial fermentation processes;
- CO<sub>2</sub> from combustion of the biological fraction of municipal solid waste or biosolids;
- CO<sub>2</sub> from combustion of the biological fraction of tire-derived fuel; and
- CO<sub>2</sub> derived from combustion of biological material, including all types of wood and wood waste, forest residue, and agricultural material.

EPA recognizes that use of certain types of biomass can be part of the national strategy to reduce dependence on fossil fuels. Efforts are underway at the Federal, state and regional level to foster the expansion of renewable resources and promote bioenergy projects when they are a way to address climate change, increase domestic alternative energy production, enhance forest management and create related employment opportunities.

For stationary sources co-firing fossil fuel and biologically-based fuel, and/or combusting mixed fuels (e.g., tire derived fuels, municipal solid waste (MSW)), the biogenic CO<sub>2</sub> emissions from that combustion are included in the biomass deferral. However, the fossil fuel CO<sub>2</sub> emissions are not. Emissions of CO<sub>2</sub> from processing of mineral feedstocks (e.g., calcium carbonate) are also not included in the deferral. Various methods are available to calculate both the biogenic and fossil fuel portions of CO<sub>2</sub> emissions, including those methods contained in the GHG Reporting Program (40 CFR part 98). Consistent with the other pollutants in PSD and Title V, there are no requirements to use a particular method in determining biogenic and fossil fuel CO<sub>2</sub> emissions.

EPA's final biomass deferral rule is an interim deferral for biogenic CO<sub>2</sub> emissions only and does not relieve sources of the obligation to meet the PSD and Title V permitting requirements for other pollutant emissions that are otherwise applicable to the source during the deferral period or that may be applicable to the source at a future date pending the results of EPA's study and subsequent rulemaking action. This means, for example, that if the deferral is applicable to biogenic CO<sub>2</sub> emissions from a particular source during the three-year

effective period and the study and potential future rulemaking do not provide for a permanent exemption from PSD and Title V permitting requirements for the biogenic CO<sub>2</sub> emissions from a source with particular characteristics, then the deferral would end for that type of source and its biogenic CO<sub>2</sub> emissions would have to be appropriately considered in any applicability determinations that the source may need to conduct for future stationary source permitting purposes, consistent with the potential subsequent rulemaking and the Final Tailoring Rule (e.g., a major source determination for Title V purposes or a major modification determination for PSD purposes).

EPA also wishes to clarify that we do not require that a PSD permit issued during the deferral period be amended or that any PSD requirements in a PSD permit existing at the time the deferral took effect, such as BACT limitations, be revised or removed from an effective PSD permit for any reason related to the deferral or when the deferral period expires. The regulation at 40 CFR 52.21(w) requires that any PSD permit shall remain in effect, unless and until it expires or it is rescinded, under the limited conditions specified in that provision. Thus, a PSD permit that is issued to a source while the deferral was effective need not be reopened or amended if the source is no

longer eligible to exclude its biogenic CO<sub>2</sub> emissions from PSD applicability after the deferral expires. However, if such a source undertakes a modification that could potentially require a PSD permit and the source is not eligible to continue excluding its biogenic CO<sub>2</sub> emissions after the deferral expires, the source will need to consider its biogenic CO<sub>2</sub> emissions in assessing whether it needs a PSD permit to authorize the modification.

Any future actions to modify, shorten, or make permanent the deferral for biogenic sources are beyond the scope of the biomass deferral action and this proposed approval of the deferral into the Missouri SIP, and will be addressed through subsequent rulemaking. The results of EPA's review of the science related to net atmospheric impacts of biogenic CO<sub>2</sub> and the framework to properly account for such emissions in Title V and PSD permitting programs based on the study are prospective and unknown. Thus, we are unable to predict which biogenic CO<sub>2</sub> sources, if any, currently subject to the deferral as incorporated into the Missouri SIP could be subject to any permanent exemptions, or which currently deferred sources could be potentially required to account for their emissions.

Similar to our approach with the Tailoring Rule, EPA incorporated the biomass deferral into the regulations governing state programs and into the Federal PSD program by amending the definition of "subject to regulation" under 40 CFR sections 51.166 and 40 CFR 52.21 respectively. Missouri implements its PSD program by incorporating section 52.21 by reference in its rule 10 CSR 10-6.060 "Construction Permits Required." The Missouri submission incorporates by reference the CFR through July 1, 2011, in order to adopt the Biomass Deferral

Based upon EPA's analysis of the required provisions of the July 20, 2011, Biomass Deferral rule and how Missouri meets these requirements, EPA is proposing to approve the September 5, 2012, Missouri SIP revision incorporating the Biomass Deferral.

#### **IX. What Action is EPA Proposing?**

EPA proposes to approve the infrastructure SIP submissions from Missouri which address the requirements of CAA sections 110 (a)(1) and (2) as applicable to the 1997 and 2006 NAAQS for PM<sub>2.5</sub>. Based upon review of the State's infrastructure SIP submissions for the 1997 and 2006 PM<sub>2.5</sub> NAAQS, and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Missouri's SIP, EPA believes that Missouri has the infrastructure to address all

applicable required elements of sections 110(a)(1) and(2) (except otherwise noted) to ensure that the 1997 and 2006 PM<sub>2.5</sub> NAAQS are implemented in the state.

In addition, EPA proposes to approve two additional SIP submissions from Missouri, one addressing the Prevention of Significant Deterioration (PSD) program in Missouri as it relates to PM<sub>2.5</sub> (unless otherwise noted), and another SIP revision addressing the requirements of section 128 of the CAA, both of which support the requirements associated with infrastructure SIPs.

We are hereby soliciting comment on this proposed action. Final rulemaking will occur after consideration of any comments.

#### **X. Statutory and Executive Order Review**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995



(15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

### **Statutory Authority**

The statutory authority for this action is provided by Section 110 of the CAA, as amended (42 U.S.C. 7410).

### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 29, 2013.

Karl Brooks,  
Regional Administrator,  
Region 7.

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